

DOI: <https://doi.org/10.34069/AI/2022.51.03.22>

How to Cite:

Bychkova, S., Fedosieieva, T., Kyrdan, B., Chubenko, A., & Sabluk, S. (2022). The difference between newly discovered and new circumstances in the judicial review process. *Amazonia Investiga*, 11(51), 225-231. <https://doi.org/10.34069/AI/2022.51.03.22>

The difference between newly discovered and new circumstances in the judicial review process

Різниця між нововиявленими і новими обставинами у процесі перегляду судових рішень

Received: February 15, 2022

Accepted: March 19, 2022

Written by:

Bychkova Svitlana⁸⁴<https://orcid.org/0000-0002-8227-2127>**Fedosieieva Tetiana**⁸⁵<https://orcid.org/0000-0003-1521-2922>**Kyrdan Bohdan**⁸⁶<https://orcid.org/0000-0001-9284-9930>**Chubenko Anton**⁸⁷<https://orcid.org/0000-0002-0887-5667>**Sabluk Serhii**⁸⁸<https://orcid.org/0000-0001-5055-9169>

Abstract

The purpose of the article is to compare new and newly discovered circumstances, which are taken into account by the court when reviewing judicial decisions. The subject of the study is newly discovered circumstances and new circumstances. Research methodology. The following methods are used in the course of the research: normative and dogmatic method, historical method, the method of analyses, logical method, legal and comparative method, method of summarization. Research results. The process of the establishment of the institution of review of court decisions is revealed. The concept of newly discovered circumstances and their place in the system of civil proceedings are considered. The view of the Supreme Court on the interpretation of newly discovered and new circumstances is analyzed. Comparative description of new and newly discovered circumstances is provided. Practical meaning. The differences between new and newly discovered circumstances in the process of reviewing court decisions are identified. Value / originality. The concept of new circumstances in civil proceedings is provided. It is stressed on the

Анотація

Метою статті є порівняння нових та нововиявлених обставин, що враховуються судом під час перегляду судових рішень. Предметом дослідження є нововиявлені обставини та нові обставини. Методологія дослідження. У ході дослідження використовуються такі методи: нормативно-догматичний, історичний, метод аналізу, логічний метод, порівняльно-правовий метод, метод узагальнення. Результати дослідження. Розкрито становлення інституту перегляду судових рішень. Розглянуто поняття нововиявлених обставин та їх місце в системі цивільного судочинства. Проаналізовано позицію Верховного Суду щодо тлумачення нововиявлених та нових обставин. Визначено поняття нових обставин у цивільному судочинстві. Наведено порівняльну характеристику нових та нововиявлених обставин. Практичне значення. Визначення відмінностей між новими та нововиявленими обставинами у процесі перегляду судових рішень. Цінність/оригінальність. Визначено поняття нових обставин у цивільному процесі. Акцентовано увагу на необхідності

⁸⁴ Doctor of Law, Professor.⁸⁵ PhD in Law, Associate Professor, Associate Professor of the Department of Private Law of National University of Kyiv-Mohyla Academy, Ukraine.⁸⁶ PhD in Law, Associate Professor of the Department of Civil Law Disciplines of the National Academy of Internal Affairs, Ukraine.⁸⁷ Doctor of Law, Professor, Head of Legal Support Office for Central Administration of the Asset Recovery and Management Agency, Ukraine.⁸⁸ PhD in Law, Chief Scientific Officer of the Scientific Institute of Public Law, Ukraine.

necessity for further study of new circumstances and the incorporation of such a list in existing legislation.

Key words: civil proceedings, judicial decision, new circumstances, newly discovered circumstances.

Introduction

The development of social, economic, historical, cultural determinants has a significant impact on the establishment and development of the institution of civil law relations. The Convention for the Protection of Human Rights and Fundamental Freedoms enshrines the right of a person to fair and public examination of his (her) case within a reasonable time by an independent and impartial court, i.e. the right to a fair trial, which is crucial for civil proceedings in general decisions.

At the present stage of development of civil procedural legislation, special attention is paid to the issue of reviewing court decisions in newly discovered or new circumstances. Such a legal procedure provides an opportunity to correct the mistakes made by the court, which arose in a given situation.

The analysis of ECtHR decisions gives the right to consider that a judicial review of an enforceable decision does not violate the principle of legal certainty, if the law of the State clearly regulates the mechanism of such review.

The Civil Procedure Code of Ukraine provides for the review of judicial decisions in newly discovered and exceptional circumstances, but there is no legislative consolidation of new circumstances. Taking into account the national case law, we propose to determine the difference between newly discovered and new circumstances in the process of reviewing court decisions.

Legal regulation of the stage of review of judicial decisions in newly discovered or new circumstances requires a comprehensive study and analysis, as the concept of “new circumstances” is not enshrined in the civil procedural legislation of Ukraine. To understand the legal basis for reviewing court decisions, it is necessary to compare new and newly discovered circumstances, reveal their concepts, structure and establish differences. This will help to correctly interpret the circumstances that led to the process of reviewing the court decision and its place in resolving the issue of civil dispute.

подальшого дослідження нових обставин та закріплення такого переліку в чинному законодавстві.

Ключові слова: цивільне судочинство, судові рішення, нові обставини, нововиявлені обставини.

Thus, the aim of the Article is to compare new and newly discovered circumstances, which are taken into account by the court when reviewing judicial decisions.

Methodology

The following methods of scientific knowledge are used in the course of the research.

Normative and dogmatic method is applied in the process of examination of the texts of the relevant instruments (Civil Procedure Code of 1923, Civil Procedure Code of 1963, Civil Procedure Code of 2004) and research materials of a number of foreign and domestic researches, who studied the problem under investigation.

The historical method gives the possibility to examine the establishment of the indicated institutions, based on the investigation of the relevant documents.

The method of analyses enabled to research the rules of current civil and civil procedural legislation and practice of its application during the review of court decisions.

Logical method is used for the formulation of the concept of new circumstances in civil proceedings.

Legal and comparative method is applied to compare new and newly discovered circumstances, their similarities and distinguishing characteristics.

The method of summarization makes it possible to draw conclusions and suggestions (to identify differences between new and newly discovered circumstances).

Literature Review

There are a number of modern researchers, who studied the process of review of court decisions. Among them we can highlight Meniuk (2021), who identifies the periods of development of the institution of review of court decisions, considers

the grounds for review of decisions on newly discovered circumstances, analyzes the case law and concludes that courts violate procedural norms in the context of establishing the stages of proceedings on newly discovered circumstances in his Thesis "The review of court decisions on newly discovered or exceptional circumstances in the civil proceedings of Ukraine".

Kolesnyk (2018) characterizes in his work "Grounds for reviewing decisions of commercial courts for newly discovered circumstances" the existing procedure for the review of court decisions on newly discovered circumstances, summarizes foreign case law and concludes on the feasibility of amending existing legislation.

Lavrov (2020) describes in his study "Review of judgments due to newly discovered circumstances in the context of the right to a fair trial in civil cases" describes the practice of the ECtHR and its place in deciding on the review of judgments on newly discovered circumstances.

Zeldina and Kolesnik (2017) examine the legal norms governing the process of review of judgments in such countries as Germany, France, Estonia, Latvia, USA and others. On the basis of the research conducted they provide suggestions for improving current legislation in Ukraine on this issue.

Among foreign scholars the problem of newly discovered evidence was considered by White (2000), who considered the differences between newly available and newly discovered circumstances based on the examination of the relevant court practice.

Judicial studies have also been carried out by Garland (2015), who considered the concept of newly discovered evidence in the decisions of the Supreme Court and Federal Appellate Courts and Brennan (2008), who tried to find the interpretation of the phrase "newly discovered evidence" in the judgments of the U.S. Court of Appeals for the First and the Second Circuit.

However, these works do not fully study the procedure for judicial review of new circumstances, the concept of new circumstances in civil proceedings, as well as do not highlight the differences between new and newly discovered circumstances.

Results and Discussion

Review of court decisions is an independent stage of civil proceedings, in which the court

verifies the existence or the lack of certain legal facts: 1) were present at the time of the case was heard, but they were not known or could not have been known; 2) occurred after the judgement became enforceable; 3) arising out of or altered in a court decision and unrelated to the subject matter of the claim; 4) are included in the list of exceptional circumstances provided by the Civil Procedure Code of Ukraine (Law of Ukraine No. 1618-IV, 2004).

These circumstances are the following:

- 1) establishment by the Constitutional Court of unconstitutionality (constitutionality) of a law, other legal act or their separate provision applied (not applied) by a court in deciding a case, if the court decision has not yet been executed;
- 2) Establishment of violation of Ukraine's international obligations in resolving the case by a court by an international judicial institution whose jurisdiction has been recognized by Ukraine;
- 3) finding of a judge guilty of a criminal offence resulting in a judicial decision by a court verdict that has entered into force.

The institution of review of court decisions in modern civil proceedings is the result of the evolution of theoretical views and practice. Thus, Chapter 24 of the Civil Procedure Code of the USSR of 1923 (Civil Procedure Code of the USSR, 1923) was devoted to the review of court decisions. Article 251 of this Chapter clearly outlined the cases, under which court decision may be reconsidered: (a) when new circumstances materially relevant to the case have come to light and are not known to the parties; b) When in the case in which the judgement is rendered it is established that false testimony has been given, criminal acts of parties, their representatives, experts, members of the court have been established; c) where the decision is based on documents that are subsequently found to be forged, or when the court's decision based on that decision is reversed.

Despite the fact that the above circumstances were, in fact, newly discovered, they were considered new. It is interesting to note that legal experts were already drawing a parallel between the new evidence and the new circumstances, arguing that these are different categories.

Vaskovskyi (2016) believes that the use of the concept of "new circumstances" in law is not correct. In his opinion, the review of the court decision takes place only because the court wrongly decided the case without knowing the

circumstances that might have changed it. Thus, the law does not refer to new circumstances that have arisen since the decision, but already existing at the time of delivery of the judgement.

Kleiman (1939, p. 17) noted that in this case we are not talking about new evidence, but about the circumstances, i.e. real facts, events and actions, which took place in nature at the time the case was heard but were not and could not be known to the court and the parties; are so important for the case that if they were known to the court, the latter would have made the opposite decision in substance. These views were later reflected in the legislation.

The second stage in the development of the institution of judicial review was the adoption of the Civil Procedure Code of 1963 (Law of Ukraine No. 1500-06, 1963). Chapter 42 provided for the procedure for reviewing decisions, decisions that have entered into force in relation to newly discovered and exceptional circumstances. Thus, decisions and rulings of the courts of first, appellate and cassation instances may be reviewed in connection with newly discovered circumstances. The grounds for such a review are: 1) significant circumstances of the case which were not and could not have been known to the complainant; 2) false testimony, knowingly misleading expert findings, false translation, falsification of documents or physical proof resulted in miscarriage of justice; 3) criminal actions of the parties, other persons who took part in the case, or criminal acts of judges committed during the consideration of this case, imposed by a court judgement that has entered into force; 4) annulment of a decision, sentence or determination (decision) of a court or other authority, which was the basis for the decision or ruling.

The current Civil Procedure Code of Ukraine stipulates that decisions, resolutions or court rulings that complete a case that has entered into force may be reviewed for newly discovered or exceptional circumstances.

There is no clear concept of newly discovered circumstances in the Civil Procedure Code of Ukraine; however, Article 423 of the Code (Law of Ukraine No. 1618-IV, 2004) provides grounds for review of the court decision for newly discovered circumstances. Among them are: 1) significant circumstances of the case, which were not established by the court and were not and could not have been known to the complainant; 2) the fact of false testimony, knowingly misleading expert findings, perjured

testimony, false translation, falsification of documents, physical or electronic evidence of an unlawful decision in this case, imposed by a sentence or decision to close criminal proceedings and to release a person from criminal liability that has entered into force; 3) abolition of judgment, which was the ground for the court decision to be reviewed. This list is exhaustive.

For a more correct interpretation of the rules of the Civil Procedure Code of Ukraine, the Plenary of the High Specialized Court of Ukraine for Civil and Criminal Cases indicated that judicial review of newly discovered facts is an independent stage of civil proceedings, in which the court verifies whether or not there were legal facts that existed when the case was heard, about which the complainant did not know or could not have known, although their submission to the court may have entailed the admission of a different content of the judicial decision.

Newly revealed facts are evidence that is significant to the case and existed when the case was heard, about which the complainant did not know or could not have known, as well as the facts following the enactment of the judicial decision, which the law classified as newly discovered circumstances.

Thus, the the Supreme Court in the case No. 552/137/15-t (2018) established that the failure of the party or person participating in the case to provide evidence, of which she was aware and which confirms the relevant circumstances, as well as the court's refusal to accept evidence is not grounds for review of the court decision in relation to newly discovered circumstances.

The necessary conditions for newly discovered circumstances are that they existed at the time of the case; could not have been known to the complainant at the time of the court's hearing; they are the subject of evidence in the case and may influence the verdict on interests of parties to a case.

Newly revealed facts must be confirmed by the actual experience, which in the prescribed manner refute the facts that are the basis for court decision. The court is entitled to revoke a judgment in relation to newly revealed facts only if these facts may affect the legal evaluation of the facts in the reviewed judgment.

The Civil Procedure Code states that evidence are any data, on the basis of which the court establishes the presence or absence of

circumstances (facts) that substantiate the claims and objections of the parties, as well as other circumstances relevant to the case. These data are established by documentary, physical and digital proof; views of experts; witnesses accounts (Article 76) (Law of Ukraine No. 1618-IV, 2004).

Such a legal view is set out in the judgment in the case No. 477/1012/14-a (2018), in which the court stated that "newly discovered circumstances are factual data by their legal nature that refute the facts, which were the basis for the court decision, and give rise to procedural consequences, affect the legality and validity of a court decision made without them".

A similar view is set out by the Supreme Court in its rulings of 6 February 2018 in case No. 816/4947/14 (2018) and 13 February 2018 in case No. 815/756/14 (2018).

Thus, newly discovered circumstances include the facts of objective reality, on which the claims and objections of the parties are based, as well as other facts that are important for the proper settlement of the dispute.

Necessary and general features of newly discovered circumstances are: 1) the existence of these circumstances during the consideration and resolution of the case and the adoption of a court decision to review the application; 2) these circumstances could not objectively be known either the applicant or the court when the case was heard; 3) significance of these circumstances for the consideration of the case (i.e. if the court's consideration of these circumstances would have resulted in a different judicial decision than that than the one that was made).

The court notes that newly discovered circumstances differ from new circumstances, changed circumstances and new evidence for reasons of time, evidentiary issue and substantial influence on the judgement.

New circumstances that have arisen or changed since the examination of the case do not constitute grounds for reconsideration. New circumstances that were discovered after the court's decision, as well as changes in the court's legal view in other similar cases, are not considered newly discovered. Circumstances established on the basis of evidence that were not submitted in a timely manner by the parties or other persons participating in the case may not be considered newly discovered. Circumstances

that arose or changed after the court's decision, as well as circumstances invoked by the participant in the trial in his explanations, cassation appeal, as well as circumstances, which may be established if the court complies with the requirements of the procedural law, cannot be considered newly discovered. A similar view is available in the decision of the Supreme Court of 06 March 2018 in the case No. 2a-23903/09/1270 (2018).

Thus, it is necessary to distinguish between newly discovered circumstances and new circumstances.

As we have already noted, newly discovered circumstances include the circumstances, enshrined in Part 2, Article 423 of the Civil Procedure Code (Law of Ukraine No. 1618-IV, 2004). However, there is no mention of new circumstances in the Code. Instead, when deciding on the existence of newly discovered circumstances, the court must distinguish between newly discovered circumstances and new circumstances.

Circumstances that arose or changed only after the court decision and are not related to the claim in this case, and therefore could not be accepted by the court when adopting court decision, are new circumstances and may be grounds for a new claim (claim). This could be, for example, a claim for an increase or decrease in maintenance due to the deterioration of the defendant's property, deteriorating health, etc. following a decision to recover maintenance from him; adapting the decision to the changing circumstances (for example, indexation of alimony in accordance with the law), annulment of a court decision where there is an indication of law (restoration of civil capacity of a natural person, who was declared incapable in case of recovery), etc. However, new circumstances can in no way give rise to the re-examination of the judgment in relation to newly revealed facts.

Conclusion

Thus, the differences between new and newly discovered circumstances, in our opinion, are:

- 1) the etymology of the concept. Newly revealed facts are evidence that is significant to the case and existed when the case was heard, about which the complainant did not know or could not have known, as well as the facts following the enactment of the judicial decision and attributed by the legislator to newly revealed facts. New

- circumstances are legal facts (circumstances) that arose or changed only after the decision was made, are not related to the action and could not be accepted by the court in making the decision. They can be the basis for new demands.
- 2) confirmation by factual data (evidence): newly discovered circumstances must refute the facts underlying the court decision; new circumstances must prove the existence or alteration of evidence at the time of the decision;
 - 3) new evidence that did not exist at the time of the trial may not be considered newly discovered circumstances. New circumstance that has appeared or changed after the consideration of the case is not a ground for reconsideration of the case.
 - 4) procedure. The procedure for annulment of final judgment for newly discovered circumstances presupposes that there is evidence that there is evidence that could not previously have been available but could have led to another outcome of the trial. Instead, new circumstances are the basis for filing a separate new claim that did not relate to the subject matter of the claims of the previous decision.
 - 5) purpose. The review of the case in relation to newly discovered circumstances is aimed at reviewing the case already considered, taking into account the circumstances that existed when the case was heard, but whose existence the complainant became aware of after the court decision. And the discovery of new circumstances arising or altered subsequent to a judicial decision and unrelated to the requirement in this case, leads to the filing of a separate new claim.

Bibliographic references

- Brennan, M. E. (2008). Interpreting the Phrase "Newly Discovered Evidence": May Previously Unavailable Exculpatory Testimony Serve as the Basis for a Motion for a New Trial Under Rule 33? *Fordham Law Review*, 77(3), pp. 1095-1145. <https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=4404&context=flr>
- Case No. 552/137/15-ts (2018). Resolution of the Supreme Court of Ukraine, Unified state register of court decisions. Kyiv, Ukraine, 29 August 2018. Retrieved from <https://reyestr.court.gov.ua/Review/76502908>
- Case No. 477/1012/14-a (2018). Resolution of the Supreme Court of Ukraine, Unified state register of court decisions. Kyiv, Ukraine, 03 April 2018. Retrieved from <https://reyestr.court.gov.ua/Review/73195172>
- Case No. 816/4947/14 (2018). Resolution of the Supreme Court of Ukraine, Unified state register of court decisions. Kyiv, Ukraine, 06 February 2018. Retrieved from <https://reyestr.court.gov.ua/Review/72088974>
- Case No. 815/756/14 (2018). Resolution of the Supreme Court of Ukraine, Unified state register of court decisions. Kyiv, Ukraine, 13 February 2018. Retrieved from <https://reyestr.court.gov.ua/Review/72290140>
- Case No. 2a-23903/09/1270 (2018e). Resolution of the Supreme Court of Ukraine, Unified state register of court decisions. Kyiv, Ukraine, 06 March 2018. Retrieved from <https://reyestr.court.gov.ua/Review/72604968>
- Civil Procedure Code of the USSR (1923). The Assembly of Legacies and Orders of the Workers and Peasants Government, 1(46-47), pp. 478. https://vcpi.nlb.by/static/pdf/kodexy-BSSR/3ok2193_1923_n_46-47.pdf
- Garland, D. S. (2015). New Trial / Newly Discovered Evidence. Favorable and Noteworthy Decisions in the Supreme Court and Federal Appellate Courts. Casetext Inc. <https://casetext.com/analysis/new-trial-newly-discovered-evidence>
- Kleiman, A. (1939). Appeals and challenges against judgements and decisions in civil cases. Moscow: Juridizdat NKYU SSSR, 1939. S. 17.
- Kolesnyk, R.M. (2018). Grounds for reviewing decisions of commercial courts for newly discovered circumstances. (PhD Dissertation). Institute of Economic and Legal Research of the National Academy of Sciences of Ukraine. http://www.iepd.kiev.ua/wp-content/uploads/2017/01/%90_%90_%91%90_%91_%90%E7%91%22%90%E7%91_%90%F8%91-%90_%90_%90%3E%90%E7%91_%90_%90%F1%90%F3.pdf
- Lavrov, V. (2020). Review of judgments due to newly discovered circumstances in the context of the right to a fair trial in civil cases. *Entrepreneurship, economy and law*, No. 6, pp. 39-43. <http://pgp-journal.kiev.ua/archive/2020/6/9.pdf>
- Law of Ukraine No. 1500-06. Civil Procedure Code of Ukraine. Official Web site of the Verkhovna Rada of Ukraine, July 18, 1963. Available online. In:

- <https://zakon.rada.gov.ua/laws/show/1501-06#Text>
- Law of Ukraine No. 1618-IV. Civil Procedure Code of Ukraine. Official Web site of the Verkhovna Rada of Ukraine, March 18, 2004. Available online. In: <https://zakon.rada.gov.ua/laws/show/1618-15/conv#n9040>
- Meniuk, D. (2021). The review of court decisions on newly discovered or exceptional circumstances in the civil proceedings of Ukraine. (PhD Dissertation). Institute of State and Law of V.M. Koresky National Academy of Sciences of Ukraine. <http://idpnan.org.ua/files/2021/menyuk-d.o.-pereglyad-sudovih-rishen-za-novoviyavlenimi-abo-viklyuchnimi-obstavinami-u-tsivilnomu-protsesi-ukrayini.pdf>
- Vaskovskyi, E. (2016). Course on civil procedure: subjects and subjects of the proceedings, procedural relations and actions. Moscow: Statut. http://www.consultant.ru/edu/student/download_books/book/vaskovskij_ev_kurs_grazhdanskogo_processa/
- White, P. J. (2000). "Newly Available, Not Newly Discovered". The journal of appellate practice and process, 2(1), pp. 7-18. <https://lawrepository.ualr.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1186&context=appellatepracticeprocess>
- Zeldina, O. and Kolesnik, R. (2017). The institution of review of court decisions for newly discovered circumstances. Law and Society, No. 4, pp. 89-95. http://pravoisuspilstvo.org.ua/archive/2017/4_2017/part_1/18.pdf